

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JERRY FRISBY and U.S. POSTAL SERVICE,  
POST OFFICE, Strong, AK

*Docket No. 01-411; Submitted on the Record;  
Issued November 15, 2001*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
PRISCILLA ANNE SCHWAB

The issue is whether appellant has more than a 27 percent permanent impairment of his right upper extremity, 25 percent permanent impairment of his left upper extremity and 42 percent permanent impairment of his left lower extremity for which he received schedule awards.

This case is on appeal before the Board for the second time. Previously, the Board set aside the October 25, 1995 schedule award determination and remanded the claim to the Office of Workers' Compensation Programs for additional development of the medical evidence.<sup>1</sup> The facts and circumstances of the case set out in the Board's prior decision are adopted herein by reference.

On remand the Office requested additional medical evidence from appellant's attending physician. By decision dated February 18, 2000, the Office granted appellant additional schedule awards of 27 percent for his right upper extremity and 25 percent for his left upper extremity but no additional impairment for his left lower extremity over the 42 percent previously awarded.

The Board finds that appellant has no more than 27 percent permanent impairment of his right upper extremity, 25 percent permanent impairment of his left upper extremity and 42 percent impairment of his left lower extremity.

The schedule award provision of the Federal Employees' Compensation Act<sup>2</sup> and its implementing regulation<sup>3</sup> set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled members or functions of

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<sup>1</sup> Docket No. 96-622 (March 12, 1998).

<sup>2</sup> 5 U.S.C. § 8107.

<sup>3</sup> 20 C.F.R. § 10.404 (1999).

the body. However, the Act does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The American Medical Association (A.M.A.), *Guides to the Evaluation of Permanent Impairment* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.

In this case, appellant's attending physician, Dr. Robert S. Bell, a Board-certified orthopedic surgeon, completed a report on May 4, 1998 and provided appellant's permanent impairment ratings. Dr. Bell noted that appellant's right upper extremity had 15 degrees of external rotation, 60 degrees of internal rotation, abduction to 110 degrees, adduction to 40 degrees, flexion of 150 degrees and extension of 40 degrees. He found that appellant's 10 percent impairment due to loss of range of motion in appellant's shoulder. The Office medical adviser concurred with this finding.<sup>4</sup> Dr. Bell further found that appellant had loss of range of motion in his elbow due to 120 degrees of flexion for a 2 percent impairment. The Office medical adviser also agreed with this finding.<sup>5</sup>

Dr. Bell noted that appellant had weakness due to the axillary nerve of 12 percent impairment and complete numbness of the radial nerve for 5 percent impairment. The Office medical adviser concurred with these impairment ratings.<sup>6</sup> Dr. Bell then added appellant's impairment ratings for the right upper extremity to reach a total of 29 percent. The Office medical adviser complied with the A.M.A., *Guides* by combining the impairment ratings to reach a total impairment of 27 percent of the right upper extremity.<sup>7</sup>

Dr. Bell found that appellant's left shoulder had extremity of 40 degrees, flexion of 150 degrees, abduction of 150 degrees, adduction of 50 degrees, internal rotation of 60 degrees and external rotation of 70 degrees. He concluded that appellant had six percent impairment of the left shoulder due to loss of range of motion. The Office medical adviser agreed with this assessment. In appellant's left elbow, Dr. Bell found flexion of 110 degrees and extension of 15 degrees. He concluded that this was a 6 percent impairment of the left upper extremity. Dr. Bell added these values to reach 12 percent impairment of the left upper extremity.

Dr. Bell further found numbness of the median nerve for a 15 percent impairment of the left upper extremity. Combined in accordance with the A.M.A., *Guides*, appellant has 25 percent impairment of his left upper extremity rather than the 27 percent found by Dr. Bell.

In appellant's left lower extremity Dr. Bell found range of motion of 15 to 90 degrees. He also found that appellant had 2¼ inches of shortening of the femur and x-ray evidence of degenerative arthritis. Dr. Bell awarded 20 percent impairment due to leg length impairment and 20 percent impairment due to loss of extension of the knee and 15 percent impairment due to

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<sup>4</sup> A.M.A., *Guides*, 43, 44, 45, Figures 38, 41, 44.

<sup>5</sup> A.M.A., *Guides*, 40, 41, Figure 32, 35.

<sup>6</sup> A.M.A., *Guides*, 54, Table 15.

<sup>7</sup> A.M.A., *Guides*, 49.

lack of flexion. He found muscle atrophy of the calf of one percent and two percent of the body as a whole. Dr. Bell also stated: “Due to arthritic changes, [appellant] would have a 25 percent impairment to the lower extremity per Table 62 using 1 millimeter of remaining cartilage interval, this would be additive to 75 percent to the lower extremity which converts to 30 percent to the body as a whole.”

The medical adviser agreed with the finding of 20 percent impairment due to limb length discrepancy.<sup>8</sup> However, the A.M.A., *Guides* provide that knee impairments due to loss of range of motion should be considered as a whole rather than as separate ratings for each impairment.<sup>9</sup> Flexion contracture of 15 degrees is a moderate impairment of 20 percent of the lower extremity. Flexion of less than 110 degrees is a mild impairment of 10 percent of the lower extremity. Therefore, the Office medical adviser properly found that appellant was only entitled to the greater of these impairments, 20 percent.

Dr. Bell reported appellant’s impairment rating due to muscle atrophy in the thigh and calf in terms of the whole person. The Act does not provide for a schedule award for a whole person, but only for the individual schedule members, *i.e.*, the upper and lower extremities.<sup>10</sup> Therefore, the Office medical adviser properly converted the impairment ratings for the whole person to those for the scheduled member, the lower extremity. Dr. Bell found one percent impairment of the whole person due to atrophy of appellant’s calf, a mild impairment of three to eight percent of the lower extremity.<sup>11</sup> The two percent impairment of the whole person due to thigh atrophy is a mild impairment of three to eight percent of the lower extremity.<sup>12</sup> The Office medical adviser found that appellant was entitled to three percent impairment due to calf atrophy and six percent due to thigh atrophy and combined these ratings to reach nine percent impairment of the lower extremity due to leg muscle atrophy.<sup>13</sup>

The Office medical adviser concluded that appellant was not entitled to an impairment rating due to arthritis of the knee because this rating would duplicate impairment due to range of motion and weakness.<sup>14</sup>

Based on the A.M.A., *Guides*, the Board finds that appellant has no more than 27 percent impairment of the right upper extremity, 25 percent impairment of the left upper extremity and 42 percent impairment of the left lower extremity.

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<sup>8</sup> A.M.A., *Guides*, 75, Table 35.

<sup>9</sup> A.M.A., *Guides*, 78.

<sup>10</sup> 5 U.S.C. § 8107.

<sup>11</sup> A.M.A., *Guides*, 77, Table, 37.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> A.M.A., *Guides*, 82. The A.M.A., *Guides* provide a 25 percent impairment for 1 millimeter of cartilage remaining. A.M.A., *Guides*, 83, Table 62. Combining this impairment with the 20 percent for limb length discrepancy would provide appellant with an impairment rating of 40 percent, less than that found by the Office medical adviser. A.M.A., *Guides*, 322-23.

The February 18, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.<sup>15</sup>

Dated, Washington, DC  
November 15, 2001

Michael J. Walsh  
Chairman

David S. Gerson  
Member

Priscilla Anne Schwab  
Alternate Member

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<sup>15</sup> Appellant submitted a March 28, 2000 letter from Dr. Bell with his notice of appeal. The Board has no jurisdiction to review evidence for the first time on appeal. 20 C.F.R. § 501.2(c).